**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.922 OF 2002

Shivaji Kashinath Pote & Ors. .. Appellants.
Vs.
Subhash Banduji Gangurde & Ors. .. Respondents.

ALONGWITH

SECOND APPEAL NO.433 OF 2002

Kashinath Nabaji Pote & Ors. .. Appellants.
Vs.
Dattatraya Ramkrishna Pimparkar .. Respondent.

Ms.Sharvari Shailendra i/b Mr.P.S.Dani for the appellants.
Mr.Kishore Patil i/b Mr.P.N.Joshi for the respondents.

**CORAM : D.B.BHOSALE, J.**

**DATED : 8TH JANUARY, 2007**

P.C.:

. Heard learned counsel for the appellants and the respondents.

2. These two appeals challenge the concurrent findings recorded by the courts below. They arise out of two independent suits, one filed by the appellants in second appeal no.922 of 2002 and, other by the respondent in second appeal no.433 of 2002. Both the suits were filed for injunction simplicitor. The subject matter of both the suits is one and the same. The appellants in both these appeals claim right over

the suit property on the basis of an agreement of sale dated 4.6.1987, whereas the respondents in second appeal no.922/02 claim right over the suit property on the basis of an agreement of sale dated 31.7.1986 and the sale deed dated 22.9.1987. The respondents in second appeal no.922/02 claim that they were put in possession when the agreement of sale was executed on 31.7.1986 and since then they are in possession of the suit property. Whereas the claim of possession made by the appellants is only on the basis of the agreement of sale dated 4.6.1987. Both the courts below have appreciated the entire evidence on record and have recorded positive finding that the respondents in second appeal no.922/02 were put in possession on 30.1.1986 and since then they are in possession. The vendor, i.e. the respondent in second appeal no.433/02, had filed a suit against the appellants for injunction simplicitor and both the courts concurrently held that the appellants failed to prove their possession over the suit property on the basis of the sale deed dated 4.6.1987. In the said suit the courts have also concurrently held that the agreement of sale dated 31.7.1986 was executed to defeat their rights. The submission of Ms.Shailendra, learned counsel for the appellants based on section 91 and 92 of the Indian Evidence Act that execution of documents was not appreciated by the courts below in

proper prespective, in my opinion, must be rejected in view of the findings of fact recorded by the courts below and that there is sufficient material on record to sustain those findings. Moreover, the document dated 31.7.1986 was executed in favour of the respondents in second appeal no.922/02 was first in point of time and which clearly shows that they were put in possession of the suit property. I do not find any reason to interfere with the concurrent findings of fact recorded by the courts below. In the circumstances both the appeals stand dismissed.

**(D.B.Bhosale, J.)**